

CARL AND LYLE CHRISTENSEN

IBLA 74-83 Decided July 8, 1974

Appeal from a decision of the Burley, Idaho, District Office, Bureau of Land Management (I-2-73-3), rejecting a Section 15 grazing lease application.

Affirmed.

Grazing Leases: Generally – Grazing Leases: Applications

A decision rejecting an application for a grazing lease will be affirmed in the absence of a showing that the decision is arbitrary, capricious or inequitable.

Grazing Leases: Generally – Grazing Leases: Apportionment of Land

Where conflicting applications have been filed for a grazing lease and the applicants each have made historical use of the lands, the Bureau of Land Management, in apportioning the land, may consider the extent to which the historical use of each applicant reflects a willingness to effectuate sound range management practices.

APPEARANCES: Carl and Lyle Christensen, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Carl and Lyle Christensen (appellants) have appealed from the May 4, 1973, decision of the Burley, Idaho, District Office, Bureau of Land Management, which rejected their application for a grazing lease of certain lands within sections 9 and 10, T. 14 S., R. 40 E., B.M., Idaho, and which granted a lease for the same area to one Don Workman. The disputed lands lie south of the Christensen property and east of the Workman property. They are bounded on the east by Bear River. Along Bear River is a waterhole for cattle which we believe is the principal source of this dispute.

Until 1968 the appellants held a lease to a portion of the conflict area which effectively allowed them to herd their cattle to the waterhole on Bear River. Workman, or his predecessor in interest, held a lease to another portion of the conflict area prior to 1968, which also allowed access to the waterhole. In 1968 the BLM became concerned with overutilization of the area for grazing purposes. Consequently, it leased the conflict area to Workman. In an attempt to solve the twin problems of appellant's lack of developed water and the overgrazing of the area, the BLM permitted an agreement between appellants and Workman. Appellants were allowed access to the waterhole strictly for watering purposes, and Workman was allowed some grazing privileges on appellants' leased land in exchange. This agreement has since been terminated because, according to the BLM, the conflict area has continued to be overgrazed.

Both Workman and the appellants applied for a lease to this area in 1972. The parties were given opportunity to reach a mutually acceptable agreement both with and without the presence of an official of the BLM. No agreement acceptable to both parties could be reached. On May 4, 1973, the District Manager rendered a decision which awarded the conflict area to Workman. This action was predicated on the following quoted findings addressed to the appellants:

- (1) Mr. Workman has held prior leases and has made historical use of the area in question.
- (2) Mr. Workman has shown a willingness to conform to past lease requirements, and made proper and efficient use of the water.
- (3) You have not shown a greater need for the land.
- (4) The conflict area is over-grazed because of livestock concentrations which result from the lack of water on your existing lease. Your cattle have been found to concentrate on the river and are unable to utilize the area leased to you. This concentration of livestock has been detrimental to the range.

The appellants were, however, granted ingress and egress across the conflict area for the purpose of hauling water to their livestock.

The appellants have protested that they have a greater need for the land, principally for the access to the waterhole. They state that their alternative source of water is much more distant from the waterhole than Workman's alternative source. As
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consequence, they assert, part of their leased lands will become unusable due to its distance from their only other source of water. Appellants further assert that the problem of overgrazing will be considerably abated due to the fact that Workman has switched from sheep to cattle. In the past, they state, their cattle were forced down to the river by Workman's sheep. Finally, appellants state that hauling water to their cattle would be impractical, due to the fact that the road is impassable for a water truck.

A review of the case indicates to us that each of the parties and BLM have disparate concerns regarding the conflict area. The BLM is concerned with the overgrazing that has occurred due to the tendency of the livestock to "bunch up" near the waterhole. Workman wants the land for grazing and is not too concerned about access to the waterhole. Appellants, however, are concerned about the land principally for access to the waterhole and only peripherally for the benefit from grazing.

The factors to be weighed by the BLM in reaching a decision are contained in 43 CFR 4121.2-1(d)(2):

The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements.

We believe that the BLM has chosen a division of lands which protects the quality of the range and at the same time takes into account the factors to be considered in 43 CFR 4121.2-1(d)(2) as well as the concerns of the parties.

The BLM has determined that to protect the range, the amount of actual grazing must be reduced. The source of the problem in the past has been the tendency of the appellants' cattle to "bunch up" and stay in the area around the waterhole. The BLM does not believe that Workman's changing of his operation from sheep to cattle will completely ameliorate the problem of overgrazing. The District Manager has stated that the appellants' cattle will still "bunch up" due to a lack of developed water on their land. And, it is clear that the appellants have in the past been unwilling to exert sufficient effort to prevent the overgrazing. Workman, however, has shown a willingness to cooperate with the BLM in avoiding overgrazing and also appears to have the facilities to do so. While both parties have at various times held leases to portions of the

conflict area, Workman's willingness to cooperate in effectuating sound range management practices must weigh in his favor. Departmental regulations and precedent require that historical use be taken into account in dividing preference lands. 43 CFR 4121.2-1 (d)(2); R. A. Malesich, 13 IBLA 199, 200 (1973).

Where both applicants have at various times held leases to the disputed area, and thus both have established historical use, the BLM should take into account the nature of the historical use, that is, the extent to which it has been in accordance with sound range management practices.

The BLM has also considered the appellants' need for water. In the past the BLM has tried to accommodate their needs. Each attempt, however, has been unsuccessful. Therefore we find it reasonable that the BLM will permit appellants to have access to the waterhole only for the purpose of hauling water to their cattle. We are not unaware of the difficulties or the expense involved in this process.

But at some point the appellants simply must expend more effort than they have in the past, if the conflict area is to be grazed in accordance with sound range management practices.

Decisions of District Managers will not be disturbed in the absence of a showing that the decision is arbitrary and capricious or inequitable. Claudio Ramirez, 14 IBLA 125 (1973); Lynn L. Moedl, 10 IBLA 106 (1973); Thomas W. Dixon, 1 IBLA 199 (1970). We conclude that the District Manager's decision is supported by a preponderance of the evidence.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

